

In the Matter of Merchant Mariner's Document No. Z-961021-D1 and All Other Seaman Documents

Issued to: ERNESTO PRALDO

DECISION OF THE COMMANDANT  
UNITED STATES COAST GUARD

1202

ERNESTO PRALDO

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations 137.11-1.

By order dated 3 February 1960, an Examiner of the United States Coast Guard at New York, New York suspended Appellant's seaman documents for six months upon finding him guilty of misconduct. The fourteen specifications found proved allege that while serving as Chief Cook on board the United States SS AMERICAN FORESTER under authority of the document above described, Appellant wrongfully failed to perform his duties on all dates between 1 January and 17 January 1960, except 7 January, while the ship was on a foreign voyage. The voyage ended on 17 January.

Since Appellant was not present or represented by counsel at the hearing on 22 January 1960, the Examiner entered a plea of not guilty to the charge and each specification on behalf of the Appellant.

The Investigating Officer testified under oath and introduced in evidence separate entries, from the Official Logbook, pertaining to each one of the alleged offenses. On the basis of these entries, the Examiner concluded that the charge and specifications had been proved.

Appellant had an extensive prior record of similar types of offenses during the past eight years.

On appeal, it is contended that the charge and specifications were not served on Appellant when he went to the Coast Guard office on 18 January; he did not fully understand his rights; he was not clearly informed that the hearing would be held on 22 January; Appellant was not in physical condition to appear at the hearing because of injuries received on 2 January 1960; these injuries also justified Appellant's failure to report for duty on the dates alleged.

For these reasons, it is requested by counsel that the order of six months' suspension be vacated or that Appellant be given a new hearing.

APPEARANCE ON APPEAL: Klein, Fields and Nolan of New York City, of Counsel

### OPINION

At the hearing, the Investigating Officer testified that, on 18 January, the charge sheet was prepared after Appellant refused to discuss the logbook entries; Appellant was informed that the hearing would be on 22 January; and the specifications were read to Appellant. Appellant then jumped up out of his chair and hurriedly left before the charge sheet could be served on him or his rights explained to him.

On 19 January, Appellant obtained a U. S. Public Health Service certificate from the New York Outpatient Clinic stating that he was "not fit for duty." In February, Appellant was hospitalized for treatment of an injured vertebrae.

On the morning of 22 January, Appellant telephoned the Coast Guard office and stated that he could be late getting there for the hearing. Appellant did not appear at any time on this date.

None of the above matters are denied on appeal. In fact, the information as to Appellant's physical condition was produced by his counsel.

Under these circumstances, it is my opinion that it was proper for the Examiner to conduct the hearing in absentia and that his conclusions should be sustained.

Appellant completely frustrated the attempt to serve the charge sheet on him. Nevertheless, the specifications were read to him and he was advised of the hearing date. The latter is verified by the fact that he called the Coast Guard and said he would be late on 22 January. At this time, he did not claim that he was physically incapable of attending the hearing. Although Appellant's rights were not explained to him on 18 January, it is obvious from his record that he is no stranger to these proceedings and the rights involved.

There is nothing substantial to indicate that Appellant was not as physically able to be present on 22 January as he was on 18 January. At most, he was an outpatient from 19 January until he was hospitalized on 4 February for two weeks.

On the merits of the case, the fourteen specifications are proved by the logbook entries and there is not a sufficient showing that Appellant should be given a new hearing to explain these entries. He did not attempt to explain them to the Investigating Officer on the basis of injuries allegedly received on 2 January. In fact, he refused to discuss the reason for the entries. Appellant had a right to do this but not to fail to appear at the hearing and then expect another hearing. Also, there is no reason why the Master would have made the entries if Appellant was actually incapacitated to the extent that he was unable to perform his duties on the ship for a period of two weeks.

### ORDER

The order of the Examiner dated at New York, New York, on 3 February 1960, is  
AFFIRMED.

J. A. Hirshfield  
Vice Admiral, United States Coast Guard  
Acting Commandant

Dated at Washington, D. C., this 7th day of November, 1960.